

LEGAL REGULATION OF MARRIAGE DISSOLUTION IN LITHUANIA

Dalia Perkumienė

Aleksandras Stulginskis University, Kaunas University of Applied Sciences

Annotation. Under Article 3.49 of Lithuanian civil code there are two cases of dissolution of marriage. Divorce or dissolution of marriage is the final termination of a marriage, cancelling the legal duties and responsibilities of marriage and dissolving the bonds of matrimony between two persons. The regulation of marriage and divorce had been set in separated Acts for a long time. Since 15th of March 2014 these questions are regulated in the new Hungarian Civil Code. Recognition of a foreign divorce depends on the law of the state in which such recognition is sought.

Key words: divorce, marriage, duties and responsibilities, recognition.

Introduction

In most countries, divorce requires the sanction of a judge or other authority in a legal process to complete a divorce. A divorce does not declare a marriage null and void, as in an annulment, but divorce cancels the marital status of the parties restoring their state to divorce, which is a single status, allowing each to marry another person¹.

Under Article 3.49 of Lithuanian civil code there are two cases of dissolution of marriage:

1. A marriage is dissolved by the death of one of the spouses or by termination by the operation of law.

2. A marriage may be dissolved through a court decision of divorce by the mutual consent of the spouses, on the application of one of the spouses or through the fault of a spouse (spouses).

In the case of dissolution of marriage by the death of one of the spouses a marriage is dissolved:

1. By the death or a court judgement of presumption of death of one of the spouses;

2. Where one of the spouses is presumed dead, the marriage shall be considered dissolved from the date on which the court judgement becomes *res judicata* or from date specified therein.

If the spouse, who has been presumed to be dead by a court judgement, turns up, the marriage may be renewed by the

presentation of a mutual application of the

spouses, after the annulment of the court judgement of presumption of death, to the Registry Office that registered the dissolution of marriage (Lithuanian Civil Code..., 2001). A marriage may not be renewed if the other spouse had remarried or there are impediments under Articles 3.12 to 3.17 of civil code².

The purpose of the work – to disclose peculiarities of marriage dissolution in Lithuania and Hungary.

Object of the work – dissolution of marriage.

Methods of the work – analysis of scientific literature, analysis of legislation, statistical analysis of the data, specifying and summarizing and logical abstraction.

Results

Divorce laws vary considerably around the world. Philippine law, in general, does not provide for divorce inside the Philippines. The only exception is with respect to Muslims. In certain circumstances Muslims are allowed to divorce. For those not of the Muslim faith, the law only allows annulment. Article 26 of the Family Code of the Philippines does provide that:

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall have capacity to remarry under Philippine law (The Family Code of the Philippines..., 1987).

The largely Catholic population of the Republic of Ireland long has tended to be stayed averse to divorce. Divorce was prohibited by the 1937 Constitution. In 1986, the electorate rejected the possibility of allowing divorce in a referendum. Subsequent to a 1995 referendum, the Fifteenth Amendment repealed the prohibition of divorce, despite Church opposition. The new

¹ In Roman law (D. 44.2.3) there is a text of Paulus that says: „It is a divorce the one that is done with the intention of constituting perpetual separation. And this way, anyone who does or says something in a moment of ire, is not valid before that for the perseverance of the action it seems that was a resolution of the animus of continuing married -*affectio maritalis*-; and for this, having the wife ordered the repudiation, if in a few moments or days the woman returned, it does not think that there exist divorce”.

² The requirements for valid marriage we discussed in the previous chapters.

regulations came into effect in 1997, making divorce possible under certain circumstances. In comparison to many other countries, it is difficult³ to obtain a divorce in the Republic of Ireland (Divorce..., 2010).

Swedish⁴, Russian⁵, and Dutch laws⁶ provide in some cases for what amounts to divorce on demand without any inquiry into the reasons therefore and without a waiting period. Those differences are far from being merely of a technical legal nature. They result from different ideological perceptions and different family policies. Countries with permissive divorce law generally share the conviction that law is powerless to deal with a family breakdown and generally respect the autonomous decisions of the spouses themselves regarding the dissolution of their marriage. The legislature in countries with more conservative divorce laws still seems to believe that restrictive divorce law could help in lowering the divorce rate. Therefore their divorce law is based on considerable state intervention when deciding whether or not to grant a divorce. This difference in approaches makes the current legislative differences not easily reconcilable.

In Denmark (§ 42 Danish Marriage Act) if both spouses apply for a divorce together they can obtain a divorce by consent through an administrative procedure at the state county

³ A couple must be separated for at least four of the preceding five years before they can obtain a divorce. It is sometimes possible to be considered separated while living under the same roof. Divorces obtained outside Ireland are recognised by the Republic only if the couple was living in that country; it is not therefore possible for a couple to travel abroad in order to obtain a divorce.

⁴ If the spouses agree that their marriage should be dissolved they have a right to an immediate divorce (except where there is a child under sixteen years of age, making it obligatory to first go through a reconsideration period of six months), Marriage Code, Chapter 5 section 1.

⁵ In case of mutual consent of both the spouses to a divorce, the marriage will be dissolved in the very first judicial session. If one of the spouses objects to a divorce, the court has the right to postpone the final decision on the issue, and to appoint a second session within the limits of 3 months. If in the second judicial session one of the spouses nevertheless insists on a divorce, the court pronounces the final judgement, and the marriage is terminated. The Russian law practically does not imply an opportunity for a court to reject a claim of the spouses for a divorce, irrespective of a spouse's consent or disagreement in respect of a divorce.

⁶ The divorce must be registered within six months of the ruling becoming irreversible, otherwise the ruling ceases to have any effect and the divorce can no longer be registered.

office. They must agree that they want a divorce through an administrative process - as well as upon certain ancillary matters. However, it should be noted that if the couple wish to become formally separated⁷ they must appear before a state county office, but if they both agree then no further attendance is required although both must sign the divorce petition (Boele-Woelki, 2003; 2004).

In Norway a divorce is granted by means of an administrative procedure whether or not the parties are in agreement. Only in a few cases will the decision be taken by the court; for example if a divorce is granted on grounds of abuse, or if the spouses do not agree on some specific factual circumstances⁸.

In the Netherlands (Art. 1:149 and 1: 77 a Dutch Civil Code) a divorce can only be obtained through a judicial process. The one single ground is irremediable breakdown of the relationship. Either one partner can ask the divorce or both on mutual request. However, as a result of the Act Opening Marriage to Same-Sex Couples, with effect from April 2001, it is now possible to obtain a so-called „lightning divorce“ by converting the marriage into a registered partnership which can be done without court intervention and theoretically within 24 hours. This is effected by both spouses requesting the Civil Registry office to draw up an act of transformation. Registered partners can then simply dissolve their partnership by mutual consent (Boele-Woelki, 2003).

The main difference between the divorce laws has shifted from the dichotomy of fault – non-fault divorce to the discrepancy regarding the accessibility of divorce. The difference between fault-based divorce and divorce on the ground of irretrievable breakdown has dominated the picture for a long time, but is now losing its relevance. This is because there are no longer any countries in Europe which maintain exclusively fault-based divorce as the sole ground for divorce. Therefore, the spouses can always choose between fault and non-fault grounds. Moreover, uncontested fault-based divorce in countries like England and Wales or France sometimes provide a ‘shorter road’ to divorce than non-fault ones and are therefore chosen by the spouses by mutual agreement. The moral negative connotation which once

⁷ One of the Danish grounds for divorce is that the parties have lived apart for 6 months after separation.

⁸ *Id.*, p. 22.

rested on the fault-based divorce is also evidently lessening (Antokolskaia, 2003; 2006).

The legal grounds for divorce in the USA are different from state to state. Many states have retained traditional fault grounds in addition to no-fault⁹ or separation-based provisions. Fault-based grounds include cruelty¹⁰, adultery, and desertion for a specified length of time, confinement in prison, and impotence that was not disclosed before marriage. Fault-based grounds can be used to circumvent the period of separation required for a no-fault divorce. To get a no-fault divorce, one spouse must simply state a reason for the divorce that is recognized by the state. In most states, it is enough to declare that the couple cannot get along (this reason goes by such names as "incompatibility," "irreconcilable differences," or "irremediable breakdown of the marriage"). In some states, however, the couple must live apart for a period of months or years before they can obtain a no-fault divorce. Furthermore, in some states the faultless spouse may be entitled to a larger financial settlement (Stewart, 2007).

Comparing various systems of divorce laws in accordance with the aforementioned criteria, one cannot easily find much in the way of a common core therein. In spite of the clear tendency towards the liberalisation of divorce, the differences might persist for a rather long period of time.

Possible solutions to decrease the number of divorces

Like in most European countries also in Hungary there is a tendency that marriages do not function as they are expected to in the long run, which causes a huge social problem. More and more couples get divorced after shorter and shorter marriages. Following the tendencies in other European countries, in Hungary, too, fewer and fewer couples get married.¹¹ The number of divorces has been permanent for decades¹² but because of the lessening desire for getting married, and due to the spread of the more and more popular form

of living, namely cohabitation, nowadays every other marriage ends in a divorce. Now one cannot say that marriages last till death do them apart.

This is worrying mainly because of the negative effects made on the common child, and is remarkable from a demographic point of view, as well. Now it is almost a cliché that divorce is quite devastating to the child's psychological development and has extensive consequences regarding their willingness to get married and to establish a family. Furthermore, it causes problems on social level as well, that is in instable, weak emotional basis marriages are fewer children born. In addition, in numerous cases the couples get divorced even before the first child is born. It causes a severe problem if – according to current tendencies – they got married at a relatively older age and the wife is in her late thirties when they split up. In this case the chance to meet a new partner, establish a new relationship in which she can give birth in time is falling year by year.

Consequently, if the dissolution of marriages has a huge social and demographical impact does the state have the right to intervene? The answer is yes and no at the same time, that is the reason why I would like to investigate a few points of view.

Basically, there are two options for the State to intervene into the dissolution of marriages. On the one hand, it can make restrictions regarding the regulations of divorce procedures, on the other hand, living in wedlock can be made more desirable.

For making restrictions the Act 1894 XXXI mentioned before is a good example, which claimed marriage could only be dissolved under particular circumstances stated in the Act. Nevertheless, the partners not wanting to live together anymore were not retained by these restrictions, rather they used different kinds of tricks in order to avoid the rules. For example, they pretended unfaithful desertion in the hope of getting rid of each other easily. It would work out in most cases. It is true, that until the XX century significantly fewer marriages were dissolved, although primarily it was not thanks to the strict rules, but a great number of other circumstances, such as a lot more influential religious rules, disapproval of the society, and finally the fact that women did not use to work, so they were not able to bring up their children by themselves.

The government coming into force in 2010 have made an attempt to decrease the number

⁹ "No fault" divorce describes any divorce where the spouse asking for a divorce does not have to prove that the other spouse did something wrong. All states allow no fault divorces.

¹⁰ The most common ground for fault-based divorce.

¹¹ In the 1970s 100.000/year, in 2010s 35.000/year

¹² 20.000-23.000/year

of divorces by changing the legal regulations. The former strict rules for dissolution were outdated, so they would have been insensible to reintegrate, which would probably have met social opposition as well. Consequently, procedural duty was raised from HUF 12.000¹³ to HUF 30.000¹⁴, with the aim that the number of divorces would decrease. It did not prove to be successful as the statistics do not show any reduction in the number of divorce cases. In my point of view, in no way would it have worked because in those cases in which the partners are only retained by the high costs, we cannot say that the marriage is saved and satisfactory.

The other possible way to decrease the number of divorces by state intervention is to make living in wedlock more desirable for the young. To achieve this it is a good way to provide tax allowance to families and spouses (as they do it in Germany). In Hungary there have also been similar attempts, but there is still a lot to do. As for me, neither the restriction of regulations nor tax allowance can be sufficient to achieve the required changes. I believe that the state can intervene into privacy only to a limited extent. This question tightly belongs to the field of psychology, and I think the attitude depends on what the young have experienced in their own family. The main problem is that approximately half of the young who are at the age of getting married have been brought up in a family where the parents got divorced. When both the man and the woman are from a broken family it is very likely that they will not get married in order to avoid marriage dissolution. (I would like to refer to this point in the next chapter). But this does not mean that this relationship will not be broken. There is only one thing sure, they really will not get divorced. Those who try to put aside bad childhood experiences and decide on getting married, due to bad parental model (I mean that they do not know, because they have never seen how a good marriage works, they do not know what to expect from each other, or what to do for each other) are very likely to get divorced in the end. It means that the problem will be passed down to the next generation.

So, the solution has to be found somewhere else. First of all, we need to place emphasis on how to bring up children. In the case mentioned above the children cannot see at

home how a balanced and satisfactory man-woman relationship works, so we have to teach them somehow. The only problem is that the results of these new 'life training lessons' will have been seen only in decades. However, these endeavours have been integrated in the education system in Hungary recently, so we will see whether it works or not.

Furthermore, we should open the door to the young to get access easily to couple or family therapy, and it is also necessary to change the attitude of the society about this question, because in Hungary it is generally believed that only 'the stupid' visit a psychologist.

Common law marriages in Hungary

Common law marriages play a bigger and bigger role, so it is necessary to say a few words about this unofficial form of cohabitation, primarily, because almost half of the children are born out of wedlock, in a common law marriage.

Until the 1990s this form of living was not very popular, and mainly the elderly, especially the widowed used to live in it. Apart from the financial reasons (the regulations of widow's pension) there were other additional reasons, for example the fidelity to the spouse even after his/her death. Later, the common-law marriage has become quite popular among people with low social economic status, mainly because of financial reasons, as well. Since the 2000s common-law marriage has obviously been the most common chosen form of cohabitation among the young. The main reason must be their disappointment in the institution of marriage. A lot of young people feel that they do not need a certificate to live happily together. But, I personally think that marriage is much more than a piece of paper. The other reason for the ignorance of marriage can be that the young overestimate the importance of freedom and independence. Consequently, they think that marriage is a clog, an unreasonably tight tie, just like a prison. Living in cohabitation without getting married is a looser kind of tie, and it is much easier to get rid of it than dissolve a marriage.

This brand new attitude causes a quite big problem to the society. Primarily, because according to the statistics, common law marriages are less lasting than marriages.¹⁵ As I have mentioned before, it is crucial because

¹³ approximately €40

¹⁴ approximately €100

¹⁵ A common law marriage lasts 6 years, opposing to marriage which last 12,5 years on average.

of the number of births - the wanted children would not be born if the relationship of the parents is not strong and long lasting enough. Furthermore, it can be a severe social question how the family can be remodelled after dissolution. The so called 'patchwork families' have a lot of advantages and disadvantages regarding the children.

The regulation of common law marriages, because of the preference of legal marriages, is not very favourable to the partners. According to the Hungarian Civil Code it is not a family affair, only a civil law contract, so unless they have children, it has no family law effect, or right to inheritance.

And finally, I would like to highlight the Act 2009 XXIX about registered common law marriage. This Act provides a legal form of cohabitation for the same sex couples, very similarly to marriage. According to the Hungarian regulations it is prohibited and against the Constitution for the same sex couples to get married, so they can live in registered common law marriage instead. This form of cohabitation has approximately the same consequences as marriage, except a few questions, which have an objective basis. For instance, they cannot wear each other's name, they are not allowed to adopt a child together, or they cannot attend a human reproductive process.

State divorces and their recognition in Lithuania

The recognition of decisions of foreign courts in Lithuania is regulated under Civil Procedure Code. The application for recognition of foreign court decision shall be presented to the Appeal court of Lithuania. A party seeking for recognition shall present:

1. The judgement;
2. Translated version of judgment in Lithuanian;
3. Evidentiary material that the party in default was duly informed about the place and time of the hearing of the case.

The norms of private international law are provided in book I of the civil code. The Article 1. 29 provides law applicable to separation and dissolution of marriage. Separation and dissolution of marriage shall be governed by the law of the spouses' state of domicile. If the spouses do not have their common domicile, the law of the state of their last common domicile shall apply, or failing that, the law of the state where the case is tried. If the law of the state of common citizenship

of the spouses does not permit a dissolution of marriage or imposes special conditions for dissolution, the dissolution of marriage may be performed in accordance with the law of the Republic of Lithuania if one of the spouses is also a Lithuanian citizen or is domiciled in the Republic of Lithuania. According to the Article 1. 30 of civil code the courts of the Republic of Lithuania shall have jurisdiction over actions of annulment, dissolution of marriage or separation in the cases provided for by the code of civil procedure of the Republic of Lithuania.

In Lithuania to oppose the recognition of a decision on divorce/legal separation/marriage annulment issued by a court in another EU Member the complaint shall be presented to the Supreme Court of Lithuania. This complaint shall be examined under the cassation procedure regulated under civil procedure code.

As an example of foreign divorce recognition in Lithuania can be presented *Rinau v. Rinau* (2007) case.

In 2003, Mrs Rinau, a Lithuanian national, married a German national and lived with him in Germany. The couple separated in 2005 and divorce proceedings were initiated in Germany; their daughter Luisa went to live with her mother. In July 2006, Mrs Rinau left Germany with Luisa to settle in Lithuania. In August 2006, the competent German court awarded provisional custody of Luisa to her father, but in December 2006 the Lithuanian court rejected the application for Luisa to be returned which Mr Rinau submitted on the basis of the 1980 Hague Convention and Regulation No 2201/2003 ("Brussels II bis Regulation"). In March 2007, that decision was overturned by a new decision on appeal ordering the return of the child to Germany, which was not however enforced. Finally, in June 2007 the competent German court granted the Rinaus' divorce, awarded permanent custody of Luisa to Mr Rinau and ordered Mrs Rinau to send Luisa back to Germany to the child's father. To this end, that court issued a certificate, pursuant to the Brussels II bis Regulation, rendering its return decision of June 2007 enforceable and allowing for its automatic recognition in another Member State. Mrs Rinau subsequently made an application to the Lithuanian courts for the nonrecognition of the „return“ decision adopted by the German court.

Those proceedings ended in the Supreme Court of Lithuania, which referred to the Court of Justice of European Union (CJEU) questions concerning the interpretation of the Brussels II bis Regulation, *inter alia* concerning the ability of a court of a Member State to certify that a return decision made by it is enforceable although, following the overturning of a decision of the court of the other Member State refusing to return the child, the conditions in which that regulation provides for the issue of the certificate would no longer be met¹⁶.

The Court held that, once a non-return decision has been taken and brought to the attention of the court of origin, the certificate rendering the decision of that court enforceable may be issued even if the initial non-return decision has been suspended, overturned, set aside or, in any event, has not become *res judicata* or has been replaced by a decision ordering return, in so far as the return of the child has not actually taken place. Since in this case no doubt had been expressed as regards the authenticity of that certificate, opposition to the recognition of the decision ordering return was not permitted and it was for the requested court only to declare the enforceability of the certified decision and to allow the immediate return of the child.

England strives to recognise both foreign marriages and foreign divorces. English courts may ignore incapacities due to, for example, racial laws. They are tolerant of other cultures and social customs, for example marriages to “children”, even though they may be invalid here. The Court balances marriages which would be “*offensive to the conscience of the English Courts*” (Cheni (otherwise Rodriguez) v Cheni [1962] 3 All ER 873) with the need for “*common sense, good manners and reasonable tolerance*” and international comity (Hodson, 2010).

The recognition of foreign divorces by the English Courts is contained in the provisions of the Family Law Act 1986 and, within Europe, by the provisions of Council Regulation (EC) 2201/2003 known as Brussels

II bis, simultaneously codified by Dicey and Morris R 78 - 86.

A divorce dissolves the marital status. Accordingly, where a local divorce had the effect of dissolving the parties marital status and such divorce was entitled to recognition in England, it was not then for the English court to look at the validity or otherwise of other marriage ceremonies between the same couple, D v. D (Nature of Recognition of Overseas Divorce) (2006) 2 FLR 825. Specifically the English court could not grant an English divorce if it had already recognised the foreign divorce. A foreign and recognised divorce has the same status on the parties as in English divorce: Dicey and Morris rule 87.

A foreign decree of divorce recognised in England does not necessarily put an end to an English maintenance order previously obtained by either party: Wood 1957 P 254, Quereshi Fam Law 173, Newmarch 1978 Fam Law 79, MacCauley 1991 1 WLR 179 and s4(2) Domestic Proceedings and Magistrates Courts Act 1978.

In Germany in accordance with the general principles of constitutional and international law, court judgements and similar sovereign acts only have direct legal effect within the territory of the state in which they were passed or performed. Germany is free to determine whether and under which conditions it will recognize foreign sovereign acts, insofar as it is not bound to do so by treaty. The dissolution of a marriage is thus basically only valid in the state in which it was dissolved. In Germany a marriage dissolved abroad continues to be viewed as still in existence.

Formal recognition is in principle required for the marriage to be effectively dissolved in the eyes of the German law.

To enter the divorce in the German civil status records, a certificate from the country where the divorce was obtained is nonetheless required in addition to the divorce decree. This certificate must take a certain form (see Article 33, Annex IV of the Regulation) (European Judicial Network, 2011).

In all other cases, the formal recognition of the foreign judgement in matrimonial matters must be obtained, pursuant to Article 7, section 1 of the Family Law Amendment Act (Familienrechts-Änderungsgesetz). The Land judicial administration authorities are as a rule responsible for the recognition of such foreign judgements. Their duties may also be delegated to the Presidents of the Higher Regional Courts (European Judicial Network,

¹⁶ This judgment is particularly important since for the first time the Court applied the new urgent preliminary ruling procedure, established with effect from 1 March 2008 to allow the Court to deal with questions relating to the area of freedom, security and justice within a significantly shorter timescale. Accordingly, in this case the judgment was given only seven weeks after the reference to the Court, whereas the duration of a preliminary ruling procedure is currently an average of 20 months.

2011).

In Estonia the order of recognition of a foreign decision may be based on an international agreement to which Estonia is a party. According to an international agreement, separate proceedings for recognition may be unnecessary. In 2002, Estonia acceded to the Hague Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations (European Judicial Network, 2011).

The decision on divorce or legal separation, made by a foreign court or by some other agency, shall be recognised, if:

1. Under the law of the country making the decision it is not possible to appeal against the divorce or legal separation;

2. Under Estonian law, the court or other agency of the foreign country was competent to decide upon divorce or legal separation;

3. The defendant who did not participate in the court proceedings was served a summons in due time pursuant to the law of that state on at least one occasion;

4. The divorce proceedings in Estonia were not instituted prior to institution of the proceedings in the country for whose decision on divorce or legal separation recognition is sought.

The divorce or legal separation shall also be recognised, if:

1. The countries of the residence of both spouses recognise the divorce or legal separation or both spouses agree with recognition in Estonia and the defendant who did not participate in the proceedings was served a summons in due time pursuant to the law of that state on at least one occasion and;

2. The divorce proceedings in Estonia were not instituted prior to institution of the proceedings in the country for whose decision on divorce or legal separation recognition is sought.

The court may refuse to recognise the divorce or legal separation, if recognition would manifestly be contrary to the essential principles of the Estonian law (public order)¹⁷.

Issues of recognition in Lithuania of a foreign divorce, nullity or judicial separation, including polygamy, is of fundamental importance for the status of the parties and any children, for possible other proceedings and

other aspects of personal and community life. It is often a preliminary in family law to deciding on other courses of action. Public policy considerations are strongly to the fore in Lithuania endeavouring to recognise foreign marriages and divorces, also religious divorces, which has an international element wherever possible. Lithuania strives to recognise both foreign marriages and foreign divorces. Lithuanian courts may ignore incapacities due to, for example, racial laws. They are tolerant of other cultures and social customs, for example marriages to “children”, even though they may be invalid here.

Conclusions

1. The Hungarian regulations regarding marriage dissolution are quite liberal, and at the same time aim to protect the family, but I am not convinced whether they have chosen the proper and most efficient method. Apparently, it is not the law that serves as a solution to people's personal affairs.

2. In common law countries, in contrast, the question is whether the court which granted the divorce had jurisdiction to do so.

3. Dissolution of marriage shall be governed by the law of the spouses' state of domicile, or in the case the latter is not indicated by the law of the state of their last common domicile, or failing that, by the law of the state where the case is tried. If the law of the state of common citizenship of the spouses does not permit dissolution of marriage or imposes special conditions for dissolution, the dissolution of marriage may be performed in accordance with the law of the Republic of Lithuania if one of the spouses is also a Lithuanian citizen or is domiciled in the Republic of Lithuania.

4. Just as Lithuanian public policy may change, so international family law practice changes, and has especially changed dramatically over the past few years. The public policy, perhaps even political dimensional, is as present now as in the past. There is a much greater awareness of international judicial comity and cooperation. Moreover, there is strong encouragement for judges in different countries to liaise together regarding a particular case.

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Dalia PERKUMIENĖ. Dr. Lecturer at Faculty of Management and Economics, Kauno Kolegija (Kaunas University of Applied Sciences): Gedimino st. 41 LT- 44240 Kaunas, Lithuania, tel. +370 37 324122, fax.: +370 37 322810, e-mail: dalia.perkumiene@fc.kauko.lt